

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AGC-INTERNATIONAL UNION OF
OPERATING ENGINEERS LOCAL 701
HEALTH AND WELFARE TRUST FUND,

Plaintiff,

v.

SCOTT BEELER and KRISTIN BEELER,
Idaho Residents; CRAIG SWAPP &
ASSOCIATES, a Washington law firm,

Defendants.

CASE NO. 2:24-cv-00725-JHC

ORDER GRANTING TEMPORARY
RESTRAINING ORDER

I

INTRODUCTION

This matter is before the Court on the AGC-International Union of Operating Engineers Local 701 Health and Welfare Trust Fund's (Health Trust) motion for ex parte entry of a temporary restraining order (TRO) and, upon notice and hearing, entry of a preliminary injunction against Defendants Scott Beeler, Kristin Beeler, and Craig Swapp & Associates. Dkt. # 2.

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2 After consideration of the Health Trust's verified complaint, motion, supporting papers
3 with exhibits, and certification, and for the reasons set forth below, the Court GRANTS the
4 Health Trust's ex parte motion for a TRO.

5 6 II

7 BACKGROUND

8 The Health Trust is a self-funded insurance plan under the Employee Retirement Income
9 Security Act (ERISA). Dkt. # 1 at 1. Its board of trustees, as fiduciaries, brings this action in the
10 name of the Health Trust. Dkt. # 2 at 2. The Health Trust provides a Plan with the purpose of
11 providing health and welfare benefits to its participants and beneficiaries. Dkt. # 1 at 1.

12 Defendant Scott Beeler is a participant, along with his wife Kristin Beeler as a
13 beneficiary. Dkt. # 1 at 2.

14 The Health Trust alleges that Kristin Beeler was injured on June 23, 2019. She brought
15 liability claims against a third party. Dkt. # 1 at 2. The Plan terms provide for payment of
16 medical claims incurred as a result of injuries caused by third parties so long as the participant
17 executes a subrogation-reimbursement agreement. *Id.* at 4–5. The Health Trust alleges it is
18 entitled to reimbursement of those medical claims it paid because Kristin Beeler has recovered
19 damages from a third party (the Settlement Proceeds). *Id.* at 6. The Health Trust alleges that the
20 subrogation and reimbursement provisions of the Plan entitle it to partial, if not full,
21 reimbursement in this matter from those specifically-identified funds. Dkt. # 2 at 10.

III

LEGAL STANDARDS

The legal standards that apply to injunctions apply to TROs as well. *Stuhlbarg Int'l Sales Co v. John D. Brush & Co., Inc.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (preliminary injunction and temporary restraining order standards are “substantially identical”). A TRO is an “extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 23 (2008). To obtain a TRO, Plaintiffs must show that they are (1) likely to succeed on the merits, (2) likely to suffer irreparable harm without preliminary relief, (3) the balance of equities tips in their favor, and (4) an injunction is in the public interest. *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009). The first two factors are the most critical. *Nken v. Holder*, 556 U.S. 418, 434 (2009).

“Motions for temporary restraining orders without notice to and an opportunity to be heard by the adverse party are disfavored and will rarely be granted.” Local Rules W.D. Wash. 65(b)(1). A court may issue a TRO without notice to the adverse party and an opportunity for them to be heard only if the requirements of Fed. R. Civ. P. 65(b) are satisfied. *Id.*; see *Methinx Ent., LLC v. Ent. Magpie Ltd.*, No. 2:21-CV-01049-RAJ, 2021 WL 3510378, at *2 (W.D. Wash. Aug. 10, 2021); *Kyko Glob., Inc. v. Prithvi Info. Sols., Ltd.*, No. 13-cv-1034, 2013 WL 12173381, at *2 (W.D. Wash. June 19, 2013).

Federal Rule of Civil Procedure 65(b) outlines two requirements for a court to issue a TRO without notice to the adverse party: first, “specific facts in an affidavit or a verified complaint [must] clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition[,]” and second, “the movant's

1 attorney certifies in writing any efforts made to give notice and the reasons why it should not be
2 required.” Unless these requirements are satisfied, “the moving party must serve all motion
3 papers on the opposing party before or contemporaneously with the filing of the motion and
4 include a certificate of service with the motion.” Local Rules W.D. Wash. 65(b)(1).
5

6 Ex parte TROs “should be restricted to serving their underlying purpose of preserving the
7 status quo and preventing irreparable harm just so long as is necessary to hold a hearing, and no
8 longer.” *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Loc. No. 70 of*
9 *Alameda Cnty.*, 415 U.S. 423, 438–39 (1974).

10 IV

11 DISCUSSION

12 First, Health Trust has provided sufficient evidence that there is a likelihood of success
13 on the merits of its claim for reimbursement. Under 29 U.S.C. § 1132(a)(3), the Health Trust is
14 authorized to bring a cause of action to either (i) “enjoin any act . . . which violates [ERISA] or
15 the terms of the plan[;]” or (ii) “to obtain other appropriate equitable relief” to redress such
16 violations or enforce ERISA or the terms of the plan. Imposition of an equitable lien or
17 constructive trust—the relief sought here—is considered appropriate equitable relief under
18 ERISA. *Sereboff v. Mid Atl. Med. Servs., Inc.*, 547 U.S. 356, 362–63 (2006).

19 Second, the Health Trust appears likely to suffer irreparable harm absent entry of a TRO
20 by this Court. Under Supreme Court precedent, the Health Trust is unable to bring an action for
21 equitable relief under ERISA § 502(a)(3) when a participant “obtains a settlement fund from a
22 third party, but spends the whole settlement on nontraceable items[.]” *Montanile v. Board of*
23 *Trustees of Nat. Elevator Industry Health Benefit Plan*, 577 U.S. 136, 139, 142, 145 (2016).

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2 Further, Health Trust has certified in writing their reasonable belief that notice of this motion for
3 a TRO “would likely enable Defendants to disburse and/or dissipate the Settlement Proceeds
4 before this Court can enter a temporary restraining order.” Dkt. # 4 at 1. Health Trust explains:

5 As set forth in the Health Trust’s verified complaint, Laura Black as counsel for
6 Defendants stated “we are settling”. This statement along with failure to offer to
7 hold a portion of the Settlement Proceeds on behalf of the Health Trust leave the
8 Health Trust with a reasonable belief that Defendants intend to disburse the
9 Settlement Proceeds without reimbursing the Health Trust, causing imminent and
10 potentially irreparable harm.

11 Dkt. # 4 at 2.

12 Third, the balance of equities weighs in favor of granting the TRO. In granting Health
13 Trusts’ motion, the Court is maintaining the status quo until a forthcoming preliminary
14 injunction hearing. As explained by Health Trust, “[t]he alternative is to deny the Healthcare
15 Trust’s motion for entry of a temporary restraining order, which then allows Defendant’s
16 opportunity and time in which to disburse or disseminate all of the Settlement Proceeds,” which,
17 as explained above, could put these proceeds out of Health Trust’s reach. *Montanile*, 577 U.S. at
18 139, 142, 145.

19 Finally, granting Health Trust’s TRO advances the public interest.¹ As explained by
20 Health Trust, “[e]nforc[ing] . . . subrogation and reimbursement provisions contained in the Plan
21 is in the public’s interest because it is beneficial to ensuring stability of ERISA plans.” Dkt. # 2
22 at 12.

23 ¹ Health Trust’s motion titles the subsection of the final factor, “Balance of the Equities is in the
24 Health Trust’s Favor,” duplicating the title of its subsection for the third factor. Dkt. # 2 at 11. Given the
content of the final subsection, the Court assumes Health Trust intended to address the final factor therein,
i.e., whether an injunction is in the public interest. *Stormans, Inc.*, 586 F.3d at 1127.
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V

CONCLUSION

Based on the above, the Court ORDERS:

1. The Health Trust's ex parte motion for a temporary restraining order, Dkt. # 2, is GRANTED;
2. Defendants are ordered not to dispose of or otherwise dissipate the Settlement Proceeds without further order of this Court;
3. The Court RESERVES deciding whether a bond will be required;
4. This Order is entered without notice to Defendants. The Healthcare Trust must personally serve Defendants with the summons, verified complaint, its motion with supporting papers, the certification, and a copy of this Order as soon as possible. The Court requires Plaintiff to certify no later than Tuesday, May 28, 2024, that it has served such documents on Defendants.
5. Any Response to the Health Trust's Motion shall be filed with the Court no later than Tuesday, June 4, 2024. Any Reply shall be filed with the Court no later than Wednesday, June 5, 2024.
6. The Court will hear oral argument on the Plaintiff's motion for a preliminary injunction on Thursday, June 6, 2024, at 3:00 p.m. before the Honorable John H. Chun, United States District Judge, in Courtroom **14A** of the United States District Court for the Western District of Washington, located at 700 Stewart Street, Seattle, WA 98101.

Dated this 24th day of May, 2024.


John H. Chun
United States District Judge